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Attorneys for Defendant
 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

OLLIE DUNLAP, III,)	No. C 08-05412 EMC
)	
Plaintiff,)	
)	STIPULATION TO DISMISS
v.)	COMPLAINT WITHOUT PREJUDICE;
)	[PROPOSED] ORDER
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

Parties stipulate to the following, subject to the approval of the Court:

WHEREAS, on June 6, 2008, plaintiff Ollie Dunlap, III, filed a medical malpractice complaint in the San Francisco County Superior Court seeking damages from Philip A. Starr, M.D. ("Dr. Starr"), and Nader Sanai, M.D. ("Dr. Sanai") for negligence;

WHEREAS, on August 26, 2008, plaintiff filed an administrative claim with the United States Department of Veterans Affairs concerning the incidents alleged in the complaint in this action;

WHEREAS, on December 2, 2008, the state court action was removed to federal court;

WHEREAS, on December 5, 2008, the United States was substituted as the party defendant for Dr. Starr and Dr. Sanai pursuant to 28 U.S.C. § 2679(d);

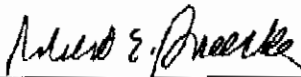
WHEREAS, the complaint in this action is premature pursuant to 28 U.S.C. § 2675(a)

STIPULATION TO DISMISS COMPLAINT WITHOUT PREJUDICE; [PROPOSED] ORDER
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1 because the administrative claim has not been finally denied in writing and six months have not
2 passed since its filing;

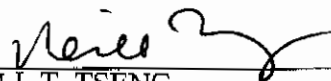
3 THEREFORE, Plaintiff's complaint in this action is hereby dismissed without prejudice,
4 so that Plaintiff may pursue administrative remedies under the Federal Tort Claims Act. The
5 parties agree that this dismissal is without prejudice to Plaintiff's refileing this action after
6 Plaintiff has properly exhausted said administrative remedies.

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8 DATED: December 10, 2008


ROBERT E. BREECKER
Attorney for Plaintiff

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11 JOSEPH P. RUSSONIELLO
12 United States Attorney

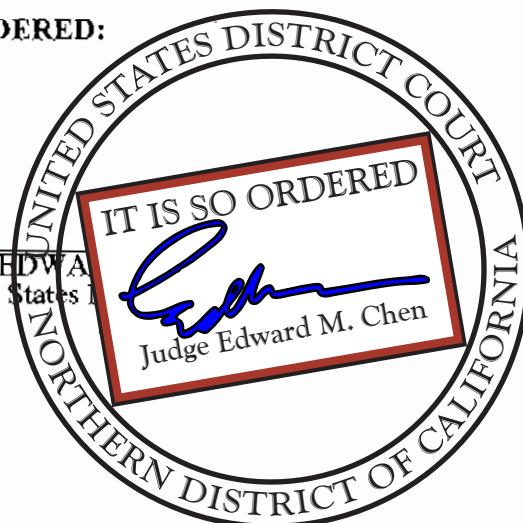
13 DATED: 12/11/08


NEILL T. TSENG
Assistant United States Attorney
Attorneys for Federal Defendant

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17 PURSUANT TO STIPULATION, IT IS SO ORDERED:

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21 DATED: 12/17/08

22 HON. EDWARD M. CHEN
United States District Judge



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